

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
NEW YORK BRANCH OFFICE
DIVISION OF JUDGES

NIAGARA MOHAWK POWER CORP.

and

Case No. 3-CA-24266

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO, LOCAL NO. 97

Ron Scott, Esq., Counsel for the General Counsel.
James LaVaute, Esq., *Blitman & King LLP*, Counsel for the Charging Party.
Stephen Vollmer, Esq., *Bond, Schoeneck & King*, Counsel for the Respondent.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard me in Syracuse, New York on March 29, 2004. The Complaint herein, which issued on August 28, 2003, and was based upon an unfair labor practice charge and an amended charge filed on May 30 and August 14, 2003 by International Brotherhood of Electrical Workers, AFL-CIO, Local No. 97, herein the Union, alleges that Niagara Mohawk Power Corp., herein the Respondent, violated Section 8(a)(1)(5) of the Act by failing and refusing to supply the Union with requested information, and by delaying in providing the Union with requested information, which information was necessary and relevant to the Union as the collective bargaining representative of certain of the Respondent's employees. Respondent defends that the parties agreed on the information that would be provided, and all that information was provided to the Union.¹

I. Jurisdiction

Respondent admits, and I find, that it has been engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. Labor Organization Status

Respondent admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. The Facts

The Union has been the collective bargaining representative for certain employees of the Respondent, including payroll clerks, for many years. The most recent collective bargaining agreement between the parties is effective for the period June 1, 2001 through September 30, 2004.

¹ Counsel for the General Counsel's unopposed Motion to Correct Errors in Transcript is hereby granted.

This controversy began when some of the payroll clerks learned that the Respondent was planning to transfer some work that they had performed for many years to outside the bargaining unit. Prior to the events herein, the Respondent employed seven payroll clerks in its payroll department in Syracuse² who performed the payroll for all the employees, whether active, retired, union or nonunion. These seven employees were in the unit and were represented by the Union. In about August 2002³, Charles Borell, the Union's business representative, was told by one of the payroll clerks, Ann Cole, that she had learned that the payroll work for pensioners that her department had been performing would be contracted out to the John Hancock Company on about January 1, 2003. At about the same time, Borell was told by another payroll clerk, Jean Abbott, that, in a few weeks, the payroll for about seventy five management and upper management (and non-unit) employees in Respondent's Information Technology Department was going to be transferred from the unit employees in Syracuse to National Grid USA, Respondent's parent corporation in Massachusetts. Based upon these conversations with Cole and Abbott, Borell wrote to John Spenard, Respondent's Director of Labor Relations on September 9:

Pursuant to the National Labor Relations Act, please furnish the requested information relative to work historically performed by the Payroll Department, Bargaining Unit Employees.

Copies of all correspondence, contracts and other documentation regarding the contracting out of retiree's pensions to the John Hancock Company effective on or about January 1, 2003.

Listing of the approximately seventy five employees' names, titles and all correspondence relative to the transferred payroll work to National Grid USA or other entity.

Please furnish the requested information no later than Tuesday, October 1, 2002.

Borell testified that he made his September 9 request to learn if the information that was provided to him by Cole and Abbott was true and to obtain the specifics of the changes.

By letter dated September 12, Spenard responded to Borell:

This is to acknowledge receipt of your request dated September 9, 2002, and received in this office on September 11, 2002, for certain information related to the above captioned issue.

At this point efforts are underway to expedite the gathering of relevant and available information pertaining to your request, though it is possible that process will not have been completed by October 1, 2002, as you have suggested in the letter.

Of course, I encourage you to call me should you have any questions regarding this request.

² At the time of the hearing herein, three employees remained in the department; the others were reassigned to other departments.

³ Unless indicated otherwise, all dates referred to herein relate to the year 2002.

On September 27, Cole and Abbott each filed grievances under the Union's contract with the Respondent. Abbott's grievance alleges: "Company arbitrarily transferred payroll of approximately seventy five employees to National Grid USA/or other entities." Her supervisor's response dated December 12 states: "The change is required due to merger related compliance with Security and Exchange Commission regulations. Complying with these regulations is not a contract violation." Cole's grievance alleges: "Company contracting out pensioners payroll to outside contractor without following specific provisions of the collective bargaining agreement." Her supervisor's response, dated December 12, states: "The Labor Agreement does not limit nor restrict the Company's processing of pensioners payroll. There is no contract violation."

In about the middle of September, Spenard called Borell and told him that that they should meet to discuss "the issues that were raised by Mr. Borell's request for information, the type of information that he was looking for." They agreed to meet on October 16.

October 16 Meeting

In addition to Borell and Spenard, attending this meeting were Nancy Masle, who was employed as a business representative and an assistant business leader by the Union, and Matt Powers, director of employee services, and Edward Rivard, manager of payroll, for National Grid USA. Borell testified that he began the meeting by referring to other payroll work that he subsequently learned was being contracted out by the Respondent. When they returned to the Union's September 9 information request, Spenard responded that the John Hancock contract had not yet been finalized, but when it was, the Union would have to sign a confidentiality agreement before that information could be transmitted. Borell said that he had no experience with confidentiality agreements, and he did not agree to this. During this meeting the Respondent's representatives never questioned the relevancy of the requested information, nor did they ever discuss, or offer to provide the Union with a summary of the arrangements with John Hancock, rather than furnishing the agreement itself. When they discussed the Union's request for the seventy five names, Powers said: "that it was a Security Exchange Commission Rule or Regulation that it had to be done this way. It could not be done in Syracuse. That these certain employees had to be done by the Parent Company or the Service Company Payroll. It was a FCC Regulation or Rule." Borell then asked them to send the Union a copy of this rule or regulation, and they said that they would. None of the Respondent's representatives questioned the relevancy of the request for these seventy five names and at the conclusion of the meeting the Respondent's representatives never said that they would provide the Union with a list of the seventy five individuals. In his affidavit given to the Board, Borell stated that at this meeting Spenard, Powers and Rivard stated that they would turn over all the information he asked for in his September 9 request. Borell's notes of this meeting state, *inter alia*, "Contract with John Hancock incomplete with providing contract. Will not furnish without confidentiality agreement."

Masle testified that Spenard opened the meeting by saying that it was in response to the Union's information request about the retiree payroll being performed by John Hancock, and the payroll of the seventy five management employees being performed by National Grid USA in New England. Powers or Rivard explained that John Hancock did the payroll for the National Grid retirees, so they determined that they should do the payroll for the Syracuse area retirees as well. Masle responded that Union employees had been doing the payroll, and that John Hancock employees are not covered by the contract. When Borell asked for the names of the seventy five employees, Powers said that there was a SEC requirement that if people were not employed by multiple companies, their payroll had to be done by the service company, and Borell said that he had never heard of that, and he wanted to see proof of that rule. Borell asked to see a copy of the John Hancock contract in order to determine whether there was a violation

of the contract. Spenard said that the contract was not available at that time, but that when it became available, the Union would have to sign a confidentiality agreement in order to receive it. She does not recall any offer by the Respondent to give the Union a summary of the John Hancock agreement in lieu of the contract itself and she does not recall whether Spenard indicated that they would provide the Union with the list of seventy five names. The Respondent's representatives never questioned the relevance of these two information requests.

Spenard testified that he began the meeting by questioning Borell and Masle about the relevance of the John Hancock agreement as it involved payroll for retirees. They responded that they wanted to learn of the arrangements in order to assess whether there was a contract violation because payroll was bargaining unit work. Spenard told them that at that time the contract was not in existence, but when it was available, there was a confidentiality issue that had to be resolved. He offered to prepare a summary of the John Hancock contract and give that to the Union in lieu of the contract itself, and the Union accepted that offer. Spenard then questioned the Union people about the relevance of the names of the seventy five individuals, and they responded that it was related to their concerns with respect to payroll and compensation. He said that he would provide the Union with a list of these seventy five management employees, and the Union agreed. During this conversation, Powers said that it was an FCC Regulation that required them to make that change, and "They expressed an interest in a copy of the regulations that required us to do so" and Powers said that he would obtain the regulation and give it to the Union. He testified:

At the conclusion of the meeting as we were wrapping up, I felt that it was important to go back and identify the three issues or the three items that we were going to be providing them. So I reviewed these specifically at the conclusion with Mr. Borell and Ms. Masle...A list of the 75 employees that were migrated to the service company, a copy of the FCC Regulations, and a summary of the arrangements with John Hancock.

As to whether Borell or Masle responded, he testified: "There was acknowledgement, that was the outcome of the arrangements."

Powers testified that Spenard began the meeting by questioning the relevance of the requested information, and the Union representatives explained that the information was relevant because the payroll was performed by unit employees. Spenard then said that there were no contracts available at that time, but he agreed to supply the Union with a summary of the arrangements that they had with John Hancock, and "they seemed satisfied." Spenard also agreed to supply the Union with a list of the seventy five employees, and, again, the Union "seemed satisfied." Powers then said that the employees were moved to the service company due to an FCC requirement. The Union asked for a copy of the provision cited, and they said that they would provide it. At the conclusion of the meeting, Spenard summarized that they would provide the Union with a summary of the arrangements with John Hancock, a list of the names and titles of the seventy five employees, and the FCC Regulation that was referred to, and "again, they seemed satisfied," although they never told Spenard to forget about their requests in the September 9 letter.

Rivard testified that Spenard opened the meeting by questioning the relevance of the Union's request and telling them that the John Hancock contract was not yet in existence. After the Union argued that the requests were relevant, Spenard said that he would provide the Union with a summary of services that John Hancock would supply, and the Union was "in agreement that would satisfy their request." Then, Spenard said that they would provide the Union with a list of the seventy five employees and "again, they were receptive that would satisfy the need."

After Powers referred to the FCC Regulation, the Union asked for a copy of it, and the Respondent agreed to provide it. In closing the meeting, Spenard said "that the agreement was that the Company would provide a summary of the services John Hancock provides. There would be a list of the 75 employees transferred to the Service Company. They would be providing the FCC language or wording around the requirement." The Union's response was: "If I recall, it was basically this would meet the need that the agreement would be." Rivard took notes of this meeting. The final notes say: "Summary of services J Hancock performs...List of CO 99 Transfers [the 75 employees]."

Post October 16 Correspondence

By letter dated October 22, Borell wrote to Spenard, as a follow-up to their October 16 meeting, requesting any laws or regulations that forbid Respondent's bargaining unit employees from performing the work discussed at the meeting. By letter to Borell dated January 21, 2003, Spenard wrote:

In response to your request and our follow-up meeting on this subject, I have enclosed the information you asked for during our meeting with respect to the summary of arrangements in place with John Hancock Insurance, as well as a listing of those individuals in New York who currently hold positions with National Grid Services Company.

As I explained during the meeting, I do not believe that the requested information which concerns non-bargaining unit employees and issues is relevant to Local 97's collective bargaining responsibilities. The relevance of this information is particularly doubtful in view of the fact that the subject matter underlying your request involves a question of employee benefit plan administration for retired employees. Nevertheless, in an effort to cooperate with the Union and without waiving any objections, we have produced the information agreed upon during our meeting.

Call me with any questions you may have regarding this information.

Attachment B of the letter is a one page document beginning: "Below is a list of primary benefit administrative services John Hancock provides in its role as paying agent..." Attachment A is a listing of eighty employees, together with their job titles. Spenard testified that he personally put both attachments in the letter of January 21, 2003. Borell testified that he received Attachment B, but did not receive Attachment A, the list of employees, and was not given the list until about July 2003. He wrote Spenard on February 18, 2003:

This letter is in response to your January 21, 2003 correspondence regarding my September 9, 2002 information request relative to the Payroll Department.

As pensioner's payroll and related work was the responsibility of bargaining unit employees, Local 97's information request regarding this matter is relevant.

My information request asked for copies of all correspondence, contracts, and other documentation regarding contracting out of retiree pension work to John Hancock Company.

Secondly, the January 21, 2003 response did not include a listing of individuals in New York employed by the National Grid Services Company.

Your January 21, 2003 correspondence is not responsive. Additionally, the Company has not responded to my October 22, 2002 request asking for a copy of all applicable laws or regulations that forbid Niagara Mohawk- A National Grid Company bargaining unit employees from performing service employees' payroll.

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Please advise of your intent in this matter.

Borell testified that his problem with Spenard's January 21, 2003 letter was not only that Attachment A was missing, and that his FCC request was not answered, but that he never agreed to accept a summary of John Hancock's services, in lieu of the agreement itself. Spenard testified that he was puzzled by Borell's letter because it was contrary to the agreements reached on October 16. However, he did not contact Borell about the situation because there was a meeting scheduled for March 20, 2003, and "it struck me as an ideal opportunity to again discuss whatever concerns Mr. Borell had with respect to his information request."

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March 20, 2003 Meeting

The parties met on March 20, 2003, ostensibly, a third step grievance meeting for Abbott and Cole's grievances. At these third step meetings, the employer and the Union each have three member panels to hear and to attempt to resolve the grievances. The Union's panel was composed of Steven Ashlaw, Pat Sunkes and Paul Nightengale; the Respondent's panel was Spenard, Jackie Christian and Jim Donnelly. Also present for the Respondent was Mary Kay Manns, its labor relations manager, Rivard and Powers. Borell testified that he began the meeting by saying "that there was ongoing information request for both grievances and I wondered where the information was." There was no response at that time, although, subsequently, Spenard said that he would furnish the information to the Union. Later, Powers responded to the information request regarding the FCC Regulation by saying that it was not really a rule or a law; rather it was a recommendation by the FCC that the payroll work should be performed in this manner. Borell asked Powers to send him a copy of the FCC recommendation, and he said that he would do so. The Union never received this.

Ashlaw, a designer in the Gas Engineering Department for the Respondent, testified that Borell opened the grievance presentation by saying that he had not received all the information that he had requested. When he brought up the John Hancock agreement, there was no response from the Respondent's representatives. However, Manns and Powers responded that the Respondent transferred the work pursuant to an FCC Regulation and Borell said that he wanted to see the FCC rule that they were referring to.

Spenard testified that at the commencement of the meeting Borell asked questions about the status of his information request. Powers then said that, contrary to his prior belief as he told them on October 16, they were unable to locate specific FCC Regulations that required them to organize in a service company operation, and that their research indicated that "it was based on a verbal recommendation from the FCC." He testified that, "There was nothing more than an OK" from the Union in response. There was no discussion of the list of the seventy five names, but there was a discussion of the John Hancock issue:

I pointed out to Mr. Borell that I had included with my January 21st letter the summary of arrangements that we had discussed and agreed upon at the October 16th meeting and that contracts were not available. That seemed to have jogged Mr. Borell's memory. Again, it was OK.

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Powers testified that he told Borell and the Union committee that it was not an FCC Regulation as he had believed; rather it was a verbal FCC recommendation. The Union representative made no further requests regarding this FCC matter. Borell then said that he had still not received the John Hancock agreements and Spenard replied that the summary of the arrangements that he sent him satisfied that request, and that the contracts were not yet in existence.⁴ Rivard testified that Powers said that as a result of their accountants' research, and conversations with the FCC, they determined that there was no statute, or anything in writing, requiring the transfer of the employees, but it was the FCC's "preference, their desire" that the service company be structured in that way. The Union representatives did not request any further information on this subject. Borell then asked Spenard for copies of the John Hancock agreement, and Spenard said that the contract was not yet in existence, and that they had agreed at the October meeting that a summary of the agreement would suffice. The Union representatives did not respond to this statement.

Manns testified that early in the meeting, Powers said that the FCC involvement was not a regulation, but was a verbal recommendation and "there was not much discussion" on the subject, nor was there any request for additional information on the FCC issue. Borell then asked for the John Hancock agreements, and Spenard said that there were no contracts yet, and that they had previously agreed to the summary, which was provided, and Borell said, "Oh, right." At the conclusion of this meeting there were no open matters.

Post March 20 Events

On May 27 and May 29, 2003, Spenard and Borell exchanged letters setting June 2, 2003 as a date to meet for the third step grievances and other issues. Spenard's letter to Borell states, *inter alia*, "It would be helpful if you were to forward in advance of the meeting any agenda items you intend to raise." Borell's letter did not notify Spenard prior to the meeting that he intended to raise any of the information issues herein. By letter dated March 22, 2004, Spenard wrote to Borell saying that although they fully responded to the Union's information requests pursuant to the understandings reached on October 16 and March 20, 2003, "in an effort to eliminate the potential for any ongoing issue or dispute on this subject" he enclosed copies of the John Hancock agreements, without requiring any confidentiality agreements, in order to expedite the delivery of the information to the Union.

IV. Analysis

It is alleged that since about October 1, the Respondent failed and refused to furnish the Union with the information that it requested on September 9, and that since about October 1, the Respondent delayed in furnishing the Union with the information requested on September 9, both in violation of Section 8(a)(5) of the Act. The initial question is whether the requested information was relevant to the Union as the collective bargaining representative of the employees, in this case the payroll clerks in Syracuse, New York. Clearly, it was. Even though the transferred work involved the payrolls of retirees and non-bargaining unit employees, prior to the transfer this work was performed by the bargaining unit employees and the transfer of this work clearly affected their working conditions. Proof of this is that of the seven bargaining unit payroll clerks employed in this department in Syracuse prior to the transfer, at the time of the hearing only three remained. I therefore find that the requested information was relevant to the

⁴ Spenard, Rivard and Powers each testified that their understanding, even at the time of the March 20, 2003 meeting, was that these contracts had not been finalized. In fact, the contracts are dated January 1, 2003.

Union as the collective bargaining representative of these payroll clerks.

The initial allegation is that the Respondent refused to furnish the information requested by the Union on September 9 and thereafter. This allegation requires a credibility determination. Spenard, Powers and Rivard each testified that at the October 16 meeting, Spenard said that the John Hancock agreement was not yet in existence, but that he would provide the Union with a summary of the agreement, a list of the seventy five names, and a copy of the FCC Regulation referred to by Powers, and Borell and Masle agreed to this. Further, at the conclusion of the meeting, Spenard summarized the agreement by repeating that the Respondent would provide the Union with these items. Borell testified that the Respondent's representatives said that they would give the Union a copy of the FCC Rule or Regulation, but they never agreed to supply the John Hancock agreement, a summary of it, or the list of seventy five names. However, his Board affidavit says that Spenard, Powers and Rivard said that they would turn over the information he requested on September 9. Masle testified that she does not recall whether the Respondent's representatives offered to give the Union a summary of the John Hancock agreement in lieu of the contract itself, or whether they agreed to provide the list of the seventy five employees. Although none of the witnesses herein were clearly incredible, I credit the testimony of Spenard, Powers and Rivard over that of Borell and Masle. In addition to the fact that their recollection of the events of October 16 appeared to be clearer than that of Borell and Masle, there is a conflict between Borell's testimony about the meeting and the affidavit he gave to the Board. Further, Spenard's January 21, 2003 letter to Borell contains a summary of the John Hancock agreement and, apparently, contained the list of seventy five (actually eighty) names. The fact that Borell did not reply to this letter for four weeks leads me to the conclusion that he did agree to the summary of the John Hancock agreement, but subsequently changed his mind, and that the letter did contain the list of eighty names. In addition, Borell and Ashlaw each testified that at the March 20, 2003 meeting, when Borell said that the Union had not yet received some of the requested information, there was no response from the Respondent's representatives. Considering Spenard, Powers and Rivard's testimony regarding the agreement reached at the October 16 meeting, as well as Spenard's January 21, 2003 letter to Borell enclosing the requested information, I do not find this testimony believable. I therefore find that at the October 16 meeting the Union consented to Spenard's offer to provide a summary of the John Hancock agreement along with the list of seventy five names and the FCC Rule or Regulation referred to. The Respondent provided the Union with the summary of the John Hancock agreement (and the agreement itself on March 22, 2004), and the list of eighty names on January 21, 2003, and told the Union on March 20, 2003 that there was no FCC Rule or Regulation, rather, that it was a verbal recommendation. I therefore find that the Respondent did, eventually, provide the Union with all the information it requested that they could provide, and I recommend that this initial allegation be dismissed.

It is next alleged that the Respondent delayed in furnishing the Union with the requested information, and on this count there can be little doubt. The duty to furnish relevant information also requires that the information be furnished in a timely manner. *Gloversville Embossing Corp.*, 314 NLRB 1258, 1265 (1994). In *Good Life Beverage Co.*, 312 NLRB 1060, 1062, fn. 9 (1993), the Board stated: "Indeed, it is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow." In evaluating the promptness of the response, the Board looks at the complexity and extent of the information requested, as well as its availability and the difficulty of retrieving it. *West Penn Power Company*, 339 NLRB No. 77 (2003). Other cases speak of "foot dragging" on the information request, *Quality Engineered Products Co., Inc.*, 267 NLRB 593, 598 (1983), "sustained inattention" to the information request, *United States Postal Service*, 276 NLRB 1282, 1288 (1985), and a responsibility to respond to a relevant request with "reasonable dispatch," *Civil*

Service Employees Association, Inc., 311 NLRB 6, 9 (1993). In *Woodland Clinic*, 331 NLRB 735, 736 (2000), the Board stated: “An unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) as a refusal to furnish the information at all.”

Three items of information were to be given to the Union by the Respondent pursuant to Borell’s September 9 request and the parties’ October 16 agreement: a summary of the John Hancock agreement, a list of the seventy five names, and the FCC Rule or Regulation referred to by Powers at the October 16 meeting. None of these were provided to the Union until January 21, 2003 when Spenard sent Borell a summary of the John Hancock agreement and the list of eighty names. The John Hancock agreement is dated January 1, 2003, although it is not clear at what stage it was at between October 16 and January 1, 2003. However, if Spenard really wanted to provide the Union with the information that it requested, in a timely manner, he could have learned sometime in, or prior to, January 2003 that the John Hancock agreement had, or was about to be, finalized, rather than not learning about it until after the March 20, 2003 meeting. More clear cut is the request for the seventy five names which the Respondent, apparently, could have provided to the Union as early as September 10 simply by pressing a few keys on its computer payroll system. Respondent never explained why it waited almost four and a half months before giving these names to the Union. In addition, at the October 16 meeting Spenard agreed to provide the Union with the FCC Rule or Regulation that Powers referred to. However, it was not until the March 20, 2003 meeting that the Respondent notified the Union that it was not an FCC Rule or Regulation, but was rather an FCC verbal recommendation. It is reasonable to assume that a company the size of the Respondent has a large number of lawyers at its disposal, yet the Respondent never explained why it took five months to learn of, and notify the Union that there was no such rule or regulation.⁵ Finally, typical of the Respondent’s attitude was Spenard’s testimony that after receiving Borell’s February 18, 2003 letter questioning Spenard’s January 21, 2003 response, he did not immediately contact Borell, but decided to wait until their next scheduled meeting, a month later. I can find no reason for the delay other than “foot dragging” and “sustained inattention” on the part of the Respondent. I therefore find that by delaying its response to the Union’s information request, the Respondent violated Section 8(a)(1)(5) of the Act.

Conclusions of Law

1. The Respondent has been engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent did not violate the Act as alleged in the Complaint by failing and refusing to supply the Union with requested information, but did violate Section 8(a)(1)(5) of the Act by delaying in providing the Union with requested information.

⁵ I agree with counsel for the Respondent’s argument in his brief that the Complaint, as amended, does not allege that the delay in responding to the request for the FCC Rule or Regulation violates the Act. However, my finding above does not conclude that the delay in notifying the Union no such rule exists violates the Act. Rather, my finding simply confirms that it was part of the Respondent’s pattern of delaying its response to the Union.

The Remedy

No affirmative remedy is necessary for the Respondent's unlawful failure to timely provide the Union with the requested information as I have found that the Respondent eventually did supply the information.

On these findings of fact, conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

The Respondent, Niagara Mohawk Power Corp., its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Failing and refusing to supply the Union in a timely manner with information that it requests, which information is necessary for, and relevant to, the Union as the collective bargaining representative for certain of the Respondent's employees.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Within 14 days after service by the Region, post at its place of business in Syracuse, New York copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in this proceeding, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 9, 2002.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region, attesting to the steps that the Respondent has taken to comply.

⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁷ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the Complaint is dismissed insofar as it alleges violations of the Act not specifically found.

5 **Dated, Washington, D.C.**

10 **Joel P. Biblowitz**
 Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail to timely furnish the Union with information that is relevant and necessary to its role as the exclusive bargaining representative of some of our employees.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

NIAGARA MOHAWK POWER CORP.
(Employer)

Dated _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

111 West Huron Street, Federal Building, Room 901, Buffalo, NY 14202-2387
(716) 551-4931, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (716) 551-4946.

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